

OTHER AGENCIES

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Interest Arbitrator Fees

Proposed Amendment: N.J.A.C. 19:16-5.11  
Proposed Amendment Authorized by the Public Employment  
Relations Commission, Lawrence Henderson, Chairman

Authority: N.J.S.A. 34:13A-16.5

Submit written comments by February 4, 2005 to:

Lawrence Henderson, Chairman  
Public Employment Relations Commission  
P.O. Box 429  
Trenton, New Jersey 08625-0429

The agency proposal follows:

Summary

One of the Commission's most important responsibilities in administering the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, is maintaining a panel of highly qualified and experienced interest arbitrators. The Commission has appointed a Special Panel of Interest Arbitrators, established rigorous selection criteria for the panel, adopted procedures for disciplining panel members and ensuring that allegations against them are fairly considered, and conducted statutorily-mandated training. The Act makes the appointment of a highly qualified panel critical because it fundamentally changed the manner in which interest arbitrators are selected to hear cases. The statute requires that, if the parties are unable to agree on an arbitrator, the arbitrator shall be assigned by lot by the Commission from its special panel of arbitrators.

N.J.S.A. 34:13A-16e(1). Thus, any member of the Special Panel of Interest Arbitrators may be assigned to the most complex and demanding interest arbitration.

As part of its role in overseeing the interest arbitration process, the Commission must periodically re-evaluate its fee schedule for interest arbitrators to ensure that the interest arbitrators on the panel are fairly compensated and that the Commission is able to attract and retain the best interest arbitrators. Review of the schedule is appropriate at this time because the current caps on fees have been in place since April 1998 and those fees have fallen below the market rate customarily charged by grievance arbitrators.

As a result of its review, the Commission believes that adjustments to the fee schedule are warranted and should be proposed for public comment. The proposed amendment to N.J.A.C. 19:16-5.11 would adjust the per diem fee for interest arbitrators assigned by lot to \$1000 instead of \$800. Where the arbitrator is mutually selected by the parties, the fee would be that established by each special panel member for conducting grievance arbitrations. There would no longer be a cap of \$1000 per day.

An increase in the fee for by-lot assignments is appropriate in light of the difficulty of interest arbitration work. Interest arbitrators must not only be familiar with labor relations principles, they must be skilled mediators: the statute

and regulations contemplate that they will assist the parties in reaching a settlement. If the parties do not reach a settlement, interest arbitrators must also be able to analyze what is usually an extensive record comprised of data on salary comparability, cost of living increases, equalized tax rates, cap law data, budget surpluses and other complex materials. The arbitrator must then write an opinion which, as emphasized by New Jersey Supreme Court decisions, must carefully and fully analyze the relevant statutory criteria. Yet the current caps of \$800 per day for a by-lot appointment and \$1000 per day for a mutual selection are lower than the per diem fee charged by the vast majority of the special panel members for conducting grievance arbitrations.

Where an arbitrator is mutually selected by the parties, the Commission is proposing that the arbitrator should have the ability to charge the per diem rate that arbitrator charges for grievance arbitration cases. Arbitrators are generally free to establish their own rates for grievance arbitration, which the parties may in turn consider in selecting an arbitrator. Interest arbitration work is generally more difficult and complicated than grievance arbitration cases. Since the parties will be advised in advance of the arbitrators' mutual selection rates, they may consider this information in deciding whether or not to agree upon an arbitrator.

Where an arbitrator is appointed by lot, the Commission is proposing that the fee be fixed at \$1000 per day. This per diem fee would recognize the difficulty of interest arbitration work but would maintain a fixed fee for this statutorily-mandated process in instances where the parties cannot agree on an arbitrator. In such instances, the parties lose their ability to consider the amount of the arbitrator's fees so the Commission believes that the fee should be fixed for all by-law appointments rather than permitted to fluctuate depending on the fee charged by each arbitrator on the panel.

#### Social Impact

The Commission believes that re-evaluation of the interest arbitrator fee schedule is warranted and will benefit the public as well as public employers and public employee organizations participating in the interest arbitration process. By re-examining interest arbitration fees in light of the complexity of interest arbitration work, the Commission seeks to retain a panel of highly qualified and experienced interest arbitrators and to attract highly qualified and experienced new members to the panel.

#### Economic Impact

The proposed amendment to N.J.A.C. 19:16-5.11 would, if adopted, increase the fee for interest arbitrators assigned by lot and permit arbitrators mutually selected by the parties to

charge the same per diem rate for interest arbitrations as for grievance arbitrations. The proposed amendment, if adopted, would have an impact on police and fire departments and their employees where either the employer or the majority representative opts to file a petition to initiate compulsory interest arbitration after the expiration of the collective negotiations agreement. That impact would consist of an increased fee of \$200 per day for by-lot appointment cases; each party would bear half of that increased cost. There may be an increased impact in mutual selection cases if the arbitrator has established a fee of above \$1000 per day, but that is a cost the parties would agree to bear and split in order to select that arbitrator.

Further, as noted above, fees for interest arbitration are incurred only when one party opts to file a petition after a contract expires. Thus, the fee is not an automatic mandate and can be avoided if the parties reach a mutual agreement on terms and conditions of employment through direct negotiations. Moreover, the Commission has recently implemented an initiative to encourage parties to consider mediation before a contract expires as an alternative to interest arbitration when the parties reach an impasse in their negotiations. The Commission would pay for the services of the mediator.

#### Federal Standards Statement

The National Labor Relations Act excludes "any State or political subdivision thereof." See 29 U.S.C. §152(2). No Federal law or regulation applies and the Commission cannot rely upon a comparable Federal rule or standard to establish fees for interest arbitrators. Re-examination of the fee schedule is thus necessary and proper.

#### Jobs Impact

The proposed amendment to N.J.A.C. 19:16-5.11 should have no impact on jobs to be generated or lost as a result of its promulgation.

#### Regulatory Flexibility Statement

The Commission's jurisdiction is limited to employer-employee relations in public employment. The proposed amendment imposes no requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq.

### Agricultural Industry Impact

The proposed amendment will have no impact on the agriculture industry.

### Smart Growth Impact

The proposed amendment will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full Text of the proposal follows (additions indicated in **boldface** thus; deletions indicated in brackets [thus]):

#### 19:16-5.11 Cost of Arbitration

The costs of services performed by the arbitrator shall be borne equally by the parties in accordance with the following fee schedule:

(a) For arbitrators assigned by lot, pursuant to N.J.S.A. 34:13A-16e(1), the fee shall be [\$800] **\$1000** per day;

(b) For arbitrators mutually selected by the parties, the fee shall be [a] **the** per diem rate [,not to exceed \$1000 per day,] set by the arbitrator **for conducting grievance arbitrations** and [filed] **on file** with the Director of Arbitration **on the date of the mutual selection.**

(c) Should the parties use an arbitration panel with an appointee of each of the parties, as permitted by N.J.A.C. 19:16-

5.6(c), each appointee's fee shall be paid by the party making the appointment. The costs of the services of the special panel member who chairs the panel shall be borne equally by the parties. The fee for the chair of the panel shall be as set forth in (a) or (b) above, depending on whether the arbitrator is assigned by lot or mutually selected by the parties.